

Message Text

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C O N F I D E N T I A L SANTIAGO 0093

EO 11652: GDS

TAGS: CI, PINT, PGOV

SUBJECT: CHRISTIAN DEMOCRATS ATTACK ON FUENTEALBA EXPULSION CASE

REFS: (A) SANTIAGO 7389; (B) SANTIAGO 7438; (C) SANTIAGO 7433

(D) SANTIAGO 7275

1. SUMMARY. CHRISTIAN DEMOCRATIC (PDC) PRESIDENT PATRICIO YLWIN USED JUDICIAL COVER OF REQUEST THAT SUPREME COURT RECONSIDER ITS REJECTION OF HABEAS CORPUS (AMPARO) PETITION IN FAVOR EXPELLED LEADER RENAN FUENTEALBA (REF A) AS VEHICLE FOR ELOQUENT ATTACK ON AUTHORITARIAN TENDENCIES OF GOC, AND FOR APPEAL TO COURT ITSELF AS DEFENDER OF RULE OF LAW IN CHILE. COURT REJECTED THE REQUEST. AYLWIN DOCUMENT HAS NOT BEEN PUBLISHED IN PAPERS BUT RECEIVED LENGTHY REVIEW IN PDC'S RADIO BALMACEDA AND IS AVAILABLE TO CHILEAN, AND, PRESUMABLY, FOREIGN JOURNALISTS. IT WILL NOT IMPROVE GOC ATTITUDE TOWARD PDC. END SUMMARY.

2. AYLWIN DOCUMENT WAS SUBMITTED TO COURT DEC 30; COURT REJECTED IT JAN 2. IT WAS DIVIDED INTO PROCEDURAL ARGUMENT ON ILLEGALITY OF FUENTEALBA'S EXPULSION, AND BROADER THOUGHTS ON UNCONSTITUTIONALITY OF GOC POSITION, CULMINATING IN WARNING THAT ABUSE OF EMERGENCY POWERS CAN LEAD TO PERMANENT CONCENTRATION OF POWER.

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3. AYLWIN ARGUED THAT APPEAL AND SUPREME COURTS HAD IMPROPERLY REJECTED "AMPARO," SINCE EXPULSION HAD BEEN CARRIED OUT WITHOUT FOLLOWING PROCEDURES ESTABLISHED BY JUNTA'S DECREE LAW 81 (REF B):

(1) EXPULSION DECREE LACKED EXPLANATION OF FACTS AND LAW REQUIRED REQUIRED BY DL 81. (2) REASON FOR EXPULSION GIVEN BY GOC (FUENTEALBA WAS DANGER TO INTERNAL SECURITY) DID NOT MATCH DL 81'S PROVISION THAT EXPULSION CAN BE MADE ONLY WHEN REQUIRED BY "HIGH INTERESTS" OF NATIONAL SECURITY. (3) EXPULSION WAS CARRIED OUT DAY DECREE WAS ISSUED AND BEFORE DECREE HAD BEEN SENT TO CONTROLLER GENERAL AS REQUIRED BY LAW. (4) FUENTEALBA WAS NOT GIVEN CHOICE OF DESTINATION AS PROVIDED FOR DL 81. AYLWIN NOTED ALSO THAT FUENTEALBA HAD BEEN SENTENCED WITHOUT HAVING BEEN JUDGED OR EVEN HEARD.

4. HE ARGUED UNCONSTITUTIONALITY OF DL 81, AND OF DL 788, ISSUED AFTER FUENTEALBA "AMPARO" REQUEST WAS MADE (REF C), WHICH PROVIDED THAT DECREES ISSUED AFTER COUP THAT WERE INCONSISTENT WITH OR CONTRARY TO CONSTITUTION ARE CONSIDERED CONSTITUTIONAL AMENDMENTS. AYLWIN SAID THAT WITH DL 788 GOC ASSUMED "TOTALITY" OF PUBLIC POWER, DECLARED "ITS SOLE WILL AS ONLY SOURCE OF LAW," AND FREED ITSELF FROM ANY OBLIGATION TO PROCEED ACCORDING TO "JURIDICALLY ESTABLISHED RULES."

5. WITH APPROPRIATE REFERENCE TO CHILE'S "BAD INTERNATIONAL IMAGE" RESULTING IN PART FROM CAMPAIGN OF "MARXIST INSPIRATION," AYLWIN SAID IT IS NECESSARY TO CORRECT FACTS THAT LEND CREDIBILITY TO FALSEHOODS CIRCULATED ABOUT CHILEAN SITUATION. HE APPEALED TO "NOBLE" FUNCTION OF JUDICIARY TO PROTECT INDIVIDUAL AND JURIDICAL GUARANTEES, AND REMINDED SUPREME COURT OF ITS POSITION IN THAT SENSE DURING LAST YEAR OF ALLENDE PERIOD. CONCLUDED THAT NO EMERGENCY SITUATION JUSTIFIES "DOMINION OF ARBITRARINESS, OF THE WILL ALONE OF HE WHO COMMANDS."

6. COMMENT. AYLWIN HAD SPONSORED "AMPARO" REQUEST BEFORE COURTS, BUT REGULAR TRIAL LAWYER HAD ARGUED CASES. IN PUTTING THIS DOCUMENT BEFORE SUPRME COURT HE EXPLOITED JUDICIARY'S CONFIDENTIAL

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COVER TO MAKE A STRONGLY POLITICAL STATEMENT AS PDC PRESIDENT. DOCUMENT OF COURSE COVERS JUDICIAL ARGUMENT, BUT POLITICAL CONTENT IS MORE IMPORTANT. GOVERNMENT OBVIOUSLY HAS PASSED WORD NOT TO PUBLICIZE IT, SINCE NO PAPER HAS EVEN MENTIONED AYLWIN'S ACTION PDC'S RADIO BALMACEDA IN REGULAR MORNING NEWS ROUNDUP JAN 3 GAVE 10 MINUTES TO IT, HOWEVER, AND IT IS ONLY MATTER OF TIME BEFORE IT REACHES INTERNATIONAL PRESS.

7. AS DOCUMENT SUBMITTED TO JUDICIARY, ANYONE HAS RIGHT TO EXAMINE IT AT COURT AND PDC HAS MADE COPIES EASILY AVAILABLE. DOCUMENT'S STATUS IS PROTECTED BY JUDICIARY, AS IS AYLWIN HIMSELF.

8. AYLWIN'S DOCUMENT IS INFINITELY FRANKER THA INTERVIEW THAT PROVOKED FUENTEALBA'S EXPULSION, AND MUCH MORE FAR REACHING THAN EX-PRES FREI'S STATEMENT REACTION TO EXPULSION (REF D). GOC CAN IGNORE IT AS LONG AS IT IS NOT PUBLISHED, BUT MAY HAVE TO SAY SOMETHING EVENTUALLY. EMBASSY HEARD THAT LONDON "TIMES" RECENTLY PUBLISHED INTERVIEW WITH LOCAL CORRESPONDENT IN WHICH AYLWIN USED SOME OF SAME RGUMENTS. JUNTA POLITICAL ADVISOR, HOWEVER, INDICATED TO EMBOFF GOC'S DESIRE TO DOWNPLAY DOCUMENT BY IGNORING IT, AND DECISION NOT TO ACT AGAINST AYLWIN.

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